LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
OCT 10 1949
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 27

SECRETARY OF AGRICULTURE, *Petitioner*,

v.

CENTRAL ROIG REFINING COMPANY, INC., ET AL.,
Respondents

No. 30

PORTO RICAN AMERICAN SUGAR REFINERY, INC.,
Petitioner,

v.

CENTRAL ROIG REFINING COMPANY, ET AL., *Respondents*

No. 32

THE GOVERNMENT OF PUERTO RICO, *Petitioner*,

v.

SECRETARY OF AGRICULTURE, ET AL., *Respondents*

BRIEF FOR THE AMERICAN SUGAR REFINING COMPANY, ET AL., RESPONDENTS-INTERVENORS

DONALD R. RICHBERG,
Attorney for The American Sugar Refining Company, et al., Respondents-Intervenors.

INDEX

	Page
Preliminary Statement	
Factual Background of the Sugar Acts	4
Summary of Argument	5
Argument	7
Point I—The Sugar Act of 1934 was enacted to limit production and expansion in order to save the sugar industry from chaotic disorganization	7
Point II—The Sugar Acts of 1934, 1937 and 1948 have accomplished their object and have been alike beneficial in Puerto Rico and the United States	13
Point III—The fundamental constitutionality of the Sugar Act of 1948 being conceded, it is only the discretionary exercise of an undoubted power of Congress that is here claimed to be invalid	14
Point IV—There is no arbitrary or unjust discrimination against Puerto Rican citizens in limiting, as in Section 207(b), their imports to the United States of refined sugar	16
Point V—The Congress has plenary power to limit the production and sale of sugar in and from Puerto Rico (which is an unincorporated territory, that is, a "possession" of the United States), under Article IV, Section 3, Clause 2 of the Constitution	20
Point VI—No person is deprived of liberty or property without due process of law by the limitation of imports into the United States—as provided in Section 207(b) of the Sugar Act of 1948	21

Page

Point VII—The challenge to the constitutionality of Sec. 207(b) is in effect a challenge to the constitutionality of the entire Act 28
Summary Reply to Briefs of Government of Puerto Rico and Central Roig 30
Conclusion 35

Citations

Cases:

Ashwander v. *Tennessee Valley Authority*, 297 U. S. 288 4
Cincinnati Soap Co. v. *United States*, 301 U. S. 308, 20, 22, 27
Currin v. *Wallace*, 306 U. S. 1 26, 27
Daniel v. *Family S. L. Ins. Co.*, — U. S. — 15
Dorchy v. *Kansas*, 264 U. S. 286 30
Downes v. *Bidwell*, 182 U. S. 244 20
Home Building & Loan Assn. v. *Blaisdell*, 290 U. S. 398 20
Hooven & Allison Co. v. *Evatt*, 324 U. S. 652 20, 21, 24, 27
Mulford v. *Smith*, 307 U. S. 38 15, 26
Nebbia v. *New York*, 291 U. S. 502 15, 20, 25
Steward Machine Co. v. *Davis*, 301 U. S. 548 27
United States v. *Darby Lumber Co.*, 312 U. S. 100 25
West Hotel Co. v. *Parrish*, 300 U. S. 579 20
Williams v. *Standard Oil Co.*, 278 U. S. 235 30

Constitution:

Art. I, Sec. 8, Cl. 1 27
Art. I, Sec. 8, Cl. 3 27
Art. IV, Sec. 3, Cl. 2 6, 19, 20
Fifth Amendment 14

Statutes:

Internal Revenue Code, Sec. 252(a) 13
Public Law No. 860, 76th Congress 29
Sugar Act of 1934 2, 5, 6, 7, 10, 13, 16, 17, 24, 28, 31, 34
Sugar Act of 1937 2, 5, 6, 10, 13, 17, 24, 28, 29
Sec. 509 29

Page

Sugar Act of 1948,
2, 4, 5, 6, 10, 13, 14, 16, 17, 25, 28, 29, 30, 31, 35
Sec. 201 2
Sec. 207 28, 29, 30
Sec. 207(a) 2
Sec. 207(b) 2, 3, 6, 7, 16, 20, 21, 28, 35
Sec. 207(g) 2, 29
Sec. 408 2, 29

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 27

SECRETARY OF AGRICULTURE, *Petitioner*,

v.

CENTRAL ROIG REFINING COMPANY, INC., ET AL., *Respondents*

No. 30

PORTO RICAN AMERICAN SUGAR REFINERY, INC., *Petitioner*,

v.

CENTRAL ROIG REFINING COMPANY, ET AL., *Respondents*

No. 32

THE GOVERNMENT OF PUERTO RICO, *Petitioner*,

v.

SECRETARY OF AGRICULTURE, ET AL., *Respondents*

BRIEF FOR THE AMERICAN SUGAR REFINING COMPANY, ET AL., RESPONDENTS-INTERVENORS

Preliminary Statement

The sole purpose of this brief in behalf of ten domestic sugar refining companies is to support the constitutionality

of Sec. 207(b) of the Sugar Act of 1948. The grant of the writ of certiorari on petition of the Government of Puerto Rico brings up this constitutional question as the single issue in No. 32. The same issue is presented in No. 27.

If this Court should *reverse* the judgment of the Court of Appeals and sustain the order of the Secretary of Agriculture, obviously the Court must at the same time sustain the constitutionality of the law under which the Secretary acted.

If this Court should *affirm* the judgment of the Court of Appeals, whereby the case would be remanded to the Secretary for further action under the law, such a ruling would certainly imply—or even amount to a holding—that the Sugar Act of 1948 as a whole is constitutional. However, in the absence of an express ruling as to Sec. 207(b) the contention might be made subsequently that that single provision (limiting the import of refined sugar from Puerto Rico into the United States) should be held separately invalid despite the validity of the Act as a whole.

For this reason it becomes necessary to emphasize at the outset of this brief that there is no separability clause in the Sugar Act of 1948—nor in the predecessor Acts of 1934 and 1937—and that the quota system adopted in these Acts "to protect the welfare of consumers and of those engaged in the domestic sugar industry" (Sec. 201) would fail tragically to accomplish these ends unless not only imports of *raw* sugar but also imports of *refined* sugar were definitely limited as in Sec. 207(a) from Hawaii; (b) from Puerto Rico; (c) from Virgin Islands; (d) from Philippines; (e) from Cuba. The refined sugar quotas are so closely interwoven with the raw sugar quotas that the Congress specifically provided in Sec. 207(g) that the refined sugar quotas "shall not be subject to suspension" (under Sec. 408) unless the President "acting thereunder specifically finds" that a

national emergency with respect to sugar exists which "requires" the suspension of refined sugar quotas.

Thus the attack upon the constitutionality of Sec. 207(b) is in reality an attack upon the entire Sugar Act of 1948. This Court cannot be expected to amend the Act by striking out one of its most vital provisions—the one upon which the welfare (indeed the continued existence) of the important domestic industry of sugar refining depends.[1] When petitioners question the power of the Congress under the Constitution to limit the importation of refined sugar they really question the power of the Congress to enact the comprehensive regulatory program under which for fifteen years the Congress has been able to protect the consumers, the farmers, the workers and investors in the domestic sugar industry.

Of course the Government of Puerto Rico does not wish to challenge the authority of Congress to enact any part of the Sugar Acts *except* the restriction upon Puerto Rican exports of refined sugar to the United States. Puerto Rico desires to retain the enormous benefits derived by its citizens from the Sugar Act because the guaranteed prosperity of its sugar industry (its major industry) would disappear overnight with the nullification of this legislation. What Puerto Rico seeks to accomplish is to retain all of its benefits from the regulation of *raw* sugar production and to be *individually* relieved of the limitations upon sugar refining

---

[1] The importance of the continental sugar refining industry is not determined merely by its capital value (approximately $250,000,000.), or by the large value of its products and the substantial earnings of its skilled labor or its existence for over 200 years. Its greatest importance lies in the enormous need of the American people for sugar, which had to be rationed in both World Wars. The ruin of the continental sugar refineries might well result in a sugar famine in the United States in a time of war. There would be an absolute dependence for inadequate, high priced supplies on foreign production and transportation—both being subject to interference by hostile action.

which are now imposed on *all* refiners *within as well as outside* the United States.

Such a judicial "interpretation" of the Sugar Act of 1948 would be actually a judicial amendment of the Act which it cannot be assumed that the Supreme Court would seriously consider. The real question presented to this Court is: Had the Congress power to enact the entire Act as a comprehensive program to protect the welfare of all those dependent upon an essential industry?

Factual Background of the Sugar Acts

This Court may hesitate to pass upon the constitutionality of the Sugar Act of 1948, under the "rules" set forth in the concurring opinion of Mr. Justice Brandeis in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288 (or for the reasons advanced under Point III of our Brief in Opposition to the Petitions). But, since the Petitions have been granted (and particularly the Petition of the Government of Puerto Rico) the constitutional challenge must be met; and so the conditions of the sugar industry which induced the legislation should be made evident to the Court.

These conditions, which are reviewed in greater detail in other briefs (as in the Brief for the Secretary of Agriculture), can be summarily described as follows:

1. Prior to 1934, tariff protection had failed to protect domestic sugar producers from "less-than-cost" prices, because of domestic overproduction.[2]

2. The quota system of limiting the production and marketing of sugar in or from the various producing areas was devised to stabilize the entire industry, and primarily to save producers of raw sugar from disaster.[3]

---

[2] U. S. Tariff Com. Report on Sugar (1934) Rep. No. 73.

[3] President Roosevelt's Message to Congress, February 8, 1934; see Appendix A.

3. Losses from reduction of production by growers of beets and sugar cane were to be offset by benefit payments to these producers, financed by processing taxes on refining.[3]

4. Continental sugar refiners, being dependent on legally limited supplies of raw sugar, were to be saved from extinction by limiting imports of *refined* sugar from all off-shore areas and by thus giving assurance of necessary imports of *raw* sugar.[4]

5. The success of the Jones-Costigan Act of 1934, led to continuance of the same program, to stabilize the sugar industry, in the Sugar Act of 1937—and in the Sugar Act of 1948, the validity of which is now being challenged.

> "Like its predecessors, the Jones-Costigan Sugar Act of 1934 and the Sugar Act of 1937, the bill has as its primary objective the stabilization of the sugar producing, refining and importing industries." Report of House Committee on Agriculture, recommending passage of the Sugar Act of 1948; House Rept. No. 796, 80th Congress, 1st Sess. p. 1.

Summary of Argument

I. The original Sugar Act of 1934 was enacted on recommendation of the Tariff Commission and President Roosevelt to establish a quota system, controlling the production, refining and marketing of sugar "with the threefold object of keeping down the price of sugar to consumers, of providing for the retention of beet and cane farming within our continental limits, and also to provide against further expansion of this necessarily expensive industry". (President's Message to Congress, February 8, 1934.)

---

[3] President Roosevelt's Message to Congress, February 8, 1934; see Appendix A.

[4] Hearings, Senate Com. on Finance, 75th Congress, on H.R. 7667, pp. 73, 75.

II. The Sugar Acts of 1934, 1937 and 1948 (all of them limiting the imports of refined sugar from Puerto Rico) have accomplished their object and have been as beneficial to consumers and all those engaged in the industry who live in Puerto Rico, as to those who live in the United States.

III. The power of Congress to enact such laws establishing sugar quotas is conceded by all present litigants. It is only the discretionary exercise of this power, in the refined sugar quota limitation, that is attacked as a violation of "due process".

IV. There is no arbitrary or unjust discrimination against citizens of Puerto Rico in the limitation upon imports into the United States of refined sugar in Sec. 207(b) of the Sugar Act of 1948.

V. The Congress has plenary power to limit the production and sale of sugar in and from Puerto Rico (which is an unincorporated territory) under Article IV, Section 3, Clause 2, of the Constitution which reads:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

VI. No person is deprived of liberty or property without due process of law by the limitation upon imports into the United States of refined sugar from Puerto Rico which is written into Sec. 207(b) of the Sugar Act of 1948. This is an essential and reasonable requirement in the comprehensive program of regulation adopted by the Congress.

VII. The challenge to the constitutionality of Sec. 207(b) is in effect a challenge to the constitutionality of the entire law, because the efficacy of the entire law would be undermined and a major amendment of the law would be effected

by a ruling that Sec. 207(b) was invalid. It is evident from the record of Congressional action that the remainder of the Act would not have been enacted, without the quota limitation which was written in Sec. 207(b).

Argument

Point I

The Sugar Act of 1934 was enacted to limit production and expansion in order to save the sugar industry from disorganization.

The original Sugar Act of 1934 was enacted because, in the words of President Roosevelt, "the disorganized state of sugar production here and in the insular regions"—called for "remedial action". So he recommended that—"the Secretary of Agriculture should be given authority to license [4a] refiners, importers and handlers to buy and sell sugar from the various producing areas only in the proportion which recent marketings of such areas bear to total United States consumption". He also pointed out that—"The application of such quotas would immediately adjust market supplies to consumption, and would provide a basis for *reduction of production* to the needs of the United States market." (Italics ours) (See Appendix A.)

It will be seen at once that the quota restrictions upon the production or marketing of *raw* sugar must have direct and immediate effects upon all refiners of sugar, and might have disastrous effects upon continental refiners in the United States if off-shore refiners were permitted to refine all the raw sugar quota produced outside the United States, and market it in the United States.[5]

[4a] Licensing was not adopted by Congress.

[5] Drastic reduction of the raw sugar supply for mainland refining, coincident with destructive competition because of the much lower costs of refining in Puerto Rico, would be inevitable. (See Report of U. S. Section Caribbean Commission, July 1948, at p. 98; also, Hearings Senate Com. on Finance, 75th Congress, on H.R. 7667, pp. 75-76).

To make this clear we point out that the total of 7,200,000 short tons of sugar was finally [6] estimated for consumption in the United States in 1948. The marketing quotas of sugar for the continental United States (as finally adjusted by the Secretary of Agriculture to take care of deficits in producing areas) were fixed under the 1948 Act as follows:

Domestic beet sugar 1,688,000 short tons.
(None of this beet sugar is available to cane sugar refiners, as the processing of beets into refined sugar is a continuous process.)
Mainland cane sugar 413,000 short tons.

In contrast, the quota allotments for continental marketing from off-shore areas were:

Hawaii	825,000	short	tons
Puerto Rico	1,024,000	"	"
Virgin Islands	6,000	"	"
Philippines	240,000	"	"
Cuba	2,940,000	"	"
Other foreign countries	64,000	"	"
Total	5,099,000	"	"

If all this off-shore sugar could have been refined in these areas before being marketed in the United States, there would have been available to continental refiners of cane sugar only 316,000 tons of raw sugar,[7] although these refineries have a capacity of 7,000,000 tons:

Hawaii and Puerto Rico had a total allotment of 1,849,000 tons, of which, under the Act, only 155,649 tons could come in as refined sugar. If all of *their* quotas could have come in as refined sugar there would have been available for continental refiners only the following amounts of raw sugar:

[6] 13 F.R. 4473, August 4, 1948.

[7] This is the 413,000 quota tons minus 97,000 tons which were processed and marketed directly by cane producers. The term "continental refiners" is used to exclude these "mainland" cane mills.

Mainland cane sugar	316,000	tons
Philippines	240,000	"
Virgin Islands	6,000	"
Cuba (2,940,000 minus 375,000 refined)	2,565,000	"
Other foreign countries (64,000 minus 9,000 refined)	55,000	"
Total (short tons)	3,182,000	"

This would have limited U. S. refiners to operating at about 45% of their refining capacity.

As a matter of fact a witness for a Puerto Rican refinery testified in the hearings on the present Act[8] that, after the *present* allowances for off-shore refiners, the amount of raw sugar normally available to the U. S. refiners is only 4,750,000 tons—or about 64% of their refining capacity.[9]

[8] Arthur Quinn, counsel for Porto Rican Sugar Refinery, Inc. in the present case. House, Com. on Agriculture Hearings, June 27, 1947, p. 87.

[9] The actual amount available in 1948 was 4,902,000 tons, slightly above the normal amount because of deficits elsewhere, as shown in the following table:

Area	Final total quota (in 1,000 short tons, raw value)	Portion marketed on mainland in refined form	Quantity available to Continental cane refineries
Domestic beet sugar	1,688	1,688	0
Mainland cane sugar	413	97	316
Hawaii	825	5	820
Puerto Rico	1,024	123	901
Virgin Islands	6	0	6
Philippines, Cuba and other foreign countries	3,244	385	2,859
Total	7,200	2,298	4,902

Notes: The final quota for the various areas which appears in the first column of figures is published in 13 Fed. Reg. 7633 (1948). The quantity of refined sugar marketed from each area is reported in Production and Marketing Administration, U. S. Department of Agriculture Release 207-49, Jan. 31, 1949, and U. S. Department of Agriculture Release 296-49, Feb. 11, 1949.)

The necessity for *some* limitation upon the importation of refined sugar in order to prevent the rapid extinction of sugar refining in the United States was obvious in 1934, is obvious today, and will be obvious as long as raw sugar quotas limit continental refiners to procuring (for refining and distributing in the domestic market) far less sugar than they have the capacity to refine.

The limitation upon Puerto Rican importation of refined sugar into the United States in the Act of 1934, and continued in the Acts of 1937 and 1948, was 126,033 tons, which was the largest amount of refined sugar exported to the United States prior to the passage of the 1934 Act. In other words Puerto Rican refiners were allowed to continue to export to the United States their maximum previous export. In contrast, U. S. refineries, which, in 1934, had substantially the same capacity as at present, were limited by quota limitations upon raw sugar to the use of 64% of their refining capacity.

President Roosevelt in 1934 asked for a law—"to provide against further expansion of this necessarily expensive industry". Certainly the Congress did not "discriminate" against Puerto Rico in providing, first, generous protection and encouragement of raw sugar production and, second, an assured, continuing market for the largest amount of refined sugar that had been previously exported.

In contrast, United States refiners—who had from 1925 to 1933 already lost 15% of their production to increased imports of refined sugar from the insular regions, and who had suffered additional heavy losses from protective policies of foreign countries and a long depression in the United States [10]—were now by law limited indefinitely to an output of about 64% of their capacity.

---

[10] Testimony of Ellsworth Bunker, House Agricultural Com. Hearings, Feb. 22, 1934, p. 170.

It is a significant fact that, while refining capacity in the United States has not been increased, but (despite a reduction in the number of refineries) has been maintained by improving the plants, the refiners of Puerto Rico in reckless opposition to United States policy, have increased their refining capacity.[11] They now claim that they are "discriminated" against because they cannot further increase the size and profits of the sugar refining enterprises in Puerto Rico by strangling the sugar refining industry in the United States.

It is difficult to answer patiently such a bare-faced contention that one of the beneficiaries of a federal law of cooperation for common benefit shall be permitted to rob his compulsory associates by repudiating his express obligation not to pick their pockets!

The attempt to conceal the injustice of this Puerto Rican contention takes three forms:

First, there is an emotional attack upon the mythical "legalized monopoly" of United States sugar refiners. This is a most curious "monopoly", involving a considerable number of highly competitive large and small refineries and small processors of cane sugar, all in competition with beet sugar processors and off-shore sugar refineries. It is a most curious "monopoly", which has the entire supply of its raw materials *limited* by law and a fair price of raw materials *maintained* by law for the benefit of its *suppliers*, with a regulation of market conditions by the government specifically designed and effective to insure a fair price to *consumers*. As a result of such government controls this "legalized monopoly" is allowed to operate at

---

[11] Testimony of Arthur L. Quinn, supra at p. 86: "These other companies came in and built their refineries since the freeze took place in 1933, despite the fact that it was written in the law that no more than 126,000 tons could come in from Puerto Rico; despite that fact, they have built their refineries".

only 64% of plant capacity, and is only allowed to profit by the difference between government regulated costs and government regulated prices. If this is "legalized monopoly" it is certainly a toothless variety, which no humane person would wish to pound even with a stuffed club.

Second, there is an emotional plea that the extraordinarily wealthy Puerto Rican sugar refiners should not be denied the additional values of refined sugar sales over raw sugar sales amounting to "from $18,000,000 to $26,000,000 annually".[12] The emotion oozes out of this argument when it is noted that the Puerto Rican workers who would then deprive United States workers of their jobs would be paid less than half of United States wages—and when it is pointed out that two Puerto Rican families (Roig and Seralles) who would be further enriched have, since 1934, "received over $2,000,000 from the Federal Treasury, and about $20,000,000 more as subsidies from consumers here", and "it can be estimated that they make a combined net income of between one and one-half and two million dollars a year" —and *they pay no income taxes to the United States.*[13] (See Appendix B.)

Third, we finally arrive at a legal argument to the effect that Puerto Ricans are "citizens" of the United States, entitled to all the rights and liberties of other citizens, although in fact they are not required to fulfill many of the obligations of other citizens such as the payment of federal income and excise taxes, because they are residents of an unincorporated territory. It is not surprising that Puerto Ricans wish to be given all the benefits, without carrying any of the burdens of a law of the United States, since

---

[12] Brief for Central Roig in Court of Appeals, p. 35.

[13] 86 Congressional Record 8741.

that seems to be the peculiar quality of Puerto Rican "citizenship".[14]

Point II

The Sugar Acts of 1934, 1937 and 1948 have accomplished their object and have been alike beneficial in Puerto Rico and the United States.

In the brief of respondents, Central Roig and Western Sugar, filed in this Court in support of the Petition for a Writ in No. 32 (No. 585 October Term 1948) it is accurately stated (p. 7):

> "The constitutional validity of the general sugar quota provisions of the Act for the relief of the farmers and raw sugar producers is not questioned."

Indeed the Sugar Acts have had such beneficent results that none of the present litigants questions the constitutionality of the Act of 1948, as a whole, and no such question has been presented heretofore to this Court. In fact, all the briefs in the Court of Appeals testify to the benefits derived by all concerned from the quota regulation of production and marketing of sugar.

As to the effect of the Sugar Acts in Puerto Rico it is pertinent to point out that, from 1934 to 1948, Puerto Rican producers of raw sugar received in quota premiums $132,285,684., and in cash subsidies $146,444,578.—a total of direct benefits amounting to $278,730,262. A mere glance at the summary of benefits received by Puerto Rican sugar producers, presented in Appendix C, *infra*, will demonstrate what a blessing the Sugar Acts have been to Puerto Rico.

---

[14] Section 252(a) of the Internal Revenue Code provides: "Any individual who is a citizen of any possession of the United States (*but not otherwise a citizen of the United States*) and who is not a resident of the United States shall be subject to taxation under this chapter only as to income derived from sources within the United States . . ." (Italics ours.)

Point III

The fundamental constitutionality of the Sugar Act of 1948 being conceded, it is only the discretionary exercise of an undoubted power of Congress that is here claimed to be invalid.

The Government of Puerto Rico, Petitioner, and Central Roig and Western Sugar, Respondents, are contending that the quota limitation upon Puerto Rican export of refined sugar to the United States is so arbitrary or discriminatory that it violates the requirement of due process of law written in the Fifth Amendment. Since, however, quota limitations on the production and marketing of *raw* sugar are conceded to be constitutional, it must follow that reasonable quota limitations upon the marketing of *refined* sugar would be constitutional. Hence, the sole arguable contention must be that this particular limitation is arbitrary or discriminatory.

The limitation cannot possibly be regarded as "arbitrary", when the purposes of the Act are understood. The quota limitations upon production and marketing of raw sugar within the United States inevitably restricted the amount available to United States refiners. If there were no restrictions on quota imports of refined sugar then offshore refiners would naturally expand their refining capacity so as to make the additional income from processing raw sugar and, by substituting more and more exports of refined sugar for raw sugar, gradually, or rapidly, strangle United States refineries, by denying to them the raw sugar which is their breath of life.

It makes no difference whether one believes that the protection of United States industry and United States workers from destructive foreign and tropical competition is or is not a wise public policy. It makes no difference whether one believes that the United States should maintain with-

in its borders adequate essential industries for the protection of its inhabitants in time of war.[15] It makes no difference whether one believes that the collection of income taxes from industries in the United States is more desirable than encouraging the growth of outside industries whose owners are not subject to United States income taxes.[16] The determination of public policy, the adoption and enforcement of economic policies to be effective throughout the United States, is solely a function of the legislative power delegated to the Congress, which is (like a State legislature)—

> "free to adopt whatever economic policy may reasonably be decided to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such a policy, or, when it is declared by the legislature to override it." *Nebbia v. New York, 291 U. S. 502, 537.*
>
> "The motive of Congress in exerting the power is irrelevant to the validity of the legislation." *Mulford v. Smith, 307 U. S. 38.*
>
> "Looking through the form of this plea to its essential basis we cannot fail to recognize it as an argument for invalidity because this Court disagrees with the desirability of the legislation. We rehearse the obvious when we say that our function is thus misconceived. We are not equipped to decide desirability; and a court cannot eliminate measures which do not happen to suit its tastes if it seeks to maintain a democratic system. The forum for the correction of ill-considered legislation is a responsive legislature." *Daniel v. Family S. L. Ins. Co.*, decided by this Court Feb. 28, 1949; 93 L. Ed. Adv. Op. 483.

---

[15] See Note 1, p. 3, supra.

[16] Citizens of Puerto Rico are held by the Internal Revenue Bureau to be "subject to Federal income tax only upon income derived from sources within the United States, in the same manner and subject to the same conditions as *non-resident aliens.*" (Italics ours). Section 29, 252-1, Regulations 111.

The major argument against the constitutionality of Section 207(b) of the Act is that it "discriminates" against outside refineries in favor of refineries inside the United States. Whether (as we contend) there is no such "discrimination", or whether the limitation upon imports is construed as a "discrimination" for the purpose of protecting an industry within the United States from unfair and destructive competition, the limitation in either case is obviously a reasonable means of making effective a public policy which the Congress certainly had the power to adopt. Hence the Act cannot be declared to be an arbitrary or unreasonable exercise of a constitutional power.

Thus the constitutional issue is narrowed down to a simple question: Is the limitation upon the export of refined sugar to the United States such an arbitrary and unjust *discrimination* against citizens of Puerto Rico that it denies them liberty and property without due process of law, in violation of their rights as citizens of the United States?

Point IV

There is no arbitrary or unjust discrimination against Puerto Rican citizens in limiting, as in Section 207(b), their exports to the United States of refined sugar.

The Sugar Act of 1948 does not restrict Puerto Rican refiners in expansion of their plants any more (or as much) as it restricts United States refiners. The methods of restriction are different but the results are similar. The quotas of sugar production have the effect of limiting the amount of raw sugar which is available to refiners in both areas.

But, under the Act of 1934, the amount of raw sugar made available to United States refineries restricted them to operating at approximately 64% of their actual operating capacity.

In contrast to this severe restriction on United States refiners, which has been substantially maintained under the succeeding Acts of 1937 and 1948, the refineries of Puerto Rico were permitted in the 1934 Act to refine and export to the United States the largest amount of refined sugar which they had ever exported.

There is a transparent sophistry in the argument that there is "gross discrimination" in restricting Puerto Rican refiners to marketing in the United States only 126,033 tons while United States refiners can refine and market "all the quota raw sugar they could acquire within the 7,200,000 ton aggregate". (Central Roig brief in support of No. 585 in this Court, at p. 5 et seq.) As heretofore demonstrated, United States refiners cannot refine more raw sugar than they can buy and the amount they can buy is absolutely limited by the operation of the Act to a normal maximum of 4,750,000 tons which was 64% of operating capacity in 1934 and is only 64% today. In contrast the Puerto Rican refining industry of 1934 (which was then almost identical with the Porto Rican American Sugar Refinery, Inc., one of the present respondents) was allowed to refine and market 126,033 tons of refined sugar which was in 1934 the largest amount that had ever been refined in any one year.[17] Obviously there was no discrimination whatever against Puerto Rican *refiners* in the Sugar Acts of 1934 and 1937. Any "discrimination" in those Acts clearly *favored* Puerto Ricans.

Since that time, however, Central Roig (in 1937) and Western Sugar (in 1938) have expanded their raw sugar operations into the field of refined sugar and, despite the statutory limitations upon exports, have increased the aggregate capacity of the Puerto Rican refineries considera-

[17] Testimony of Arthur L. Quinn, its attorney in Senate Finance Com. Hearings, August 9, 1937, p. 128.

bly beyond the total market for refined sugar provided by domestic consumption in Puerto Rico of about 100,000 tons plus the 126,033 tons which can be exported to the United States. So the contention is now made that Puerto Ricans are being "discriminated" against because, having profited enormously at the expense of United States consumers, workers and investors, by national regulation of the sugar industry (without paying U. S. income taxes) they are not being permitted to profit further at our expense by their wilful violation[18] of the purpose of the law "to provide against further expansion of this necessarily expensive industry". (President Roosevelt's Message of Feb. 8, 1934)

This "discrimination" against persons who deliberately increased their output or capacity to produce beyond the limitations of a regulated market is a self-imposed "discrimination"—which is legal absurdity. It is as though fifty passengers, having only twenty-five reserved seat tickets, boarded a train in which all seats had been sold and then claimed that they were "discriminated" against because they were not allowed to fight for twenty-five seats with the other passengers who were sitting in the seats to which the others were legally entitled.

The charge of "discrimination" against Puerto Rican refiners as business men is so lacking in merit or even plausibility that astute counsel have sought to broaden it into a charge of discrimination against Puerto Ricans as "citizens". That is why we have the fantastic argument presented that as "citizens" Puerto Ricans have a constitutional liberty to engage in a trade, which cannot be limited by a legislative regulation of the trade. Counsel for the Goverment of Puerto Rico endeavoured to sweeten the sour flavor of such an argument by the unwarranted assumption that the production of raw sugar alone was an "industry in

---

[18] See Note 11, p. 11, supra.

distress" which could be constitutionally regulated. But, they argue, the sugar refining industry (although obviously involved in the same "distress") and sales of refined sugar (which must be involved in the same "distress") cannot be regulated. Such regulation they argue, would deprive citizens of Puerto Rico of liberty and property. This apparent argument is so insubstantial that eventually we arrive at the only intelligible contention which is worthy of consideration by the Supreme Court, which is that enterprises in Puerto Rico must be given the same access to mainland markets that is given to mainland enterprises or else citizens of Puerto Rico are not given that equal protection under the laws of the United States to which they claim they are entitled under the Constitution.

There are two reasons for counsel for Puerto Rico to veil this argument with vague, emotional appeals to the "intent and spirit of the Constitution" and denials of the power of Congress "to impose upon the people of Puerto Rico—a colonial system".

The first reason is that the plenary power of Congress under Art. IV, Sec. 3, Clause 2 of the Constitution over Puerto Rico as an unincorporated territory authorizes legislation applying particularly to Puerto Rico just as the legislature of a State has the power to enact laws imposing regulations on its citizens which are not imposed on the citizens of other States.

The second reason is that the limitation of a right to do business, which might exist in the absence of a regulatory law, does not deprive any citizen of his liberty or property without due process of law. The limitation of a previous freedom is the inevitable effect of any regulatory law. The only constitutional issue arising is as to whether there was an existing evil which the legislature had the power to remedy and whether the means adopted were a reasonable

means to remedy the evil. (*West Hotel Co.* v. *Parrish*, 300 U. S. 579; *Nebbia* v. *New York*, 291 U. S. 502; *Home Building & Loan Assn.* v. *Blaisdell*, 290 U. S. 398.)

Point V

The Congress has plenary power to limit the production and sale of sugar in and from Puerto Rico (which is an unincorporated territory, that is, a "possession" of the United States), under Article IV, Section 3, Clause 2 of the Constitution.

The challenge to the constitutionality of Sec. 207(b) of the Sugar Act of 1948, presents simply a denial of the power of the Congress to limit the importation into the United States of refined sugar from Puerto Rico.

Article IV, Section 3, Clause 2 of the Constitution provides:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

It has been settled by repeated decisions of this Court that, under this constitutional grant, the Congress has plenary power to govern the unincorporated territory—the "possession"—of Puerto Rico in any manner which it deems wise and in the public interest of the territory and of the United States.

Downes v. *Bidwell*, 182 U. S. 244
Cincinnati Soap Co. v. *U. S.*, 301 U. S. 308
Hooven & Allison Co. v. *Evatt*, 324 U. S. 652

This settled (and conceded) power to regulate the production and sale of sugar in Puerto Rico obviously extends

to *refined* as well as to *raw* sugar. The *existence* of this constitutional power cannot be seriously questioned.

> "It is no longer doubted that the United States may acquire territory by conquest or by treaty and may govern it through the exercise of the power of Congress conferred by Para. 3 of Article IV of the Constitution 'to dispose of and make all needful Rules and Regulations respecting the Territory, or other Property belonging to the United States.' Dooley v. United States, supra, 183 U. S. at 157; Dorr v. United States, 195 U. S. 138, 149; Balzac v. Porto Rico, supra, 305; Cincinnati Soap Co., v. United States, 301 U. S. 308, 323."
>
> *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 673-4.

The *exercise* of this power is, of course, subject to the general limitations imposed upon the Congress by the Fifth Amendment. Accordingly, the present challenge to the constitutionality of Sec. 207(b) is laid in the contention that restrictions upon imports of refined sugar from Puerto Rico deprive Puerto Ricans of liberty or property without due process of law.

Point VI

No person is deprived of liberty or property without due process of law by the limitation of imports into the United States—as provided in Section 207(b) of the Sugar Act of 1948

There are two long established principles of constitutional law which completely dispose of the contention that the limitation upon imports of refined sugar from Puerto Rico deprive anyone of liberty or property without due process of law.

One. The Congress has absolute power to tax or limit or forbid imports from foreign countries or from unincorporated territories.

This power may be exercised either to protect domestic industries, or in aid of a program to stabilize a domestic industry (as here), or for any other purpose to protect or to promote the general welfare.

In order to arouse a prejudice against the "protection" of United States industries, the argument is here advanced that the purpose of the limitation of imports of refined sugar is to "protect" United States refiners. But this argument, if soundly based, would establish the constitutionality of the law.

In *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308 the validity of a tax on domestic processing of coconut oil from the Philippines (then an unincorporated territory like Puerto Rico) was attacked. This Court upheld the tax and held (p. 320):

> "The tax itself, it is said, was imposed for the purpose of protecting certain industries in this country; and it is challenged on that ground. That Congress has power to levy a tax with the collateral purpose of thereby protecting the industries of the United States is no longer open to doubt. *Hampton & Co. v. United States*, 276 U. S. 394, 411."

This Court further held, in the same case, that the balancing of the respective interests of the people of a territory and of the people of the continental United States was "not for judicial but for Congressional consideration and determination." (p. 320)

Surely, at this late date, the *power* of the Congress to make effective either "protective" or "free trade" economic or political policies, cannot be questioned; nor can it be anticipated that the Supreme Court will undertake to overrule the judgment of the Congress in exercising this purely *legislative* authority.

In the present case, however, the attempt to arouse a prejudice against "protective" legislation is peculiarly unfair because here we have a law designed and effective to benefit all those engaged in, or dependent upon, a large, vital industry; a law by which not only people in continental United States but also those in the territories and possessions are all "protected" from the overproduction and destructive competition which injured most of all the beet and sugar producers both inside and outside the United States.

In the present case the limitation on imports of refined sugar is an integral part of a comprehensive plan which the Congress adopted in the exercise of its several powers: to regulate interstate and foreign commerce, to levy taxes, and to govern the territories and possessions of the United States. There is a certain blind humor in the Puerto Rican position that the Congress can constitutionally regulate the production and marketing of the products of an industry which is operative in the United States, its territories, possessions and foreign countries, but cannot, as a part of that regulation, exercise the most obvious constitutional power of this, or any other, nation—to restrict imports into the country!

Of course, the humor of this contention is discreetly veiled by the implication that Puerto Rico is a part of the United States and goods from Puerto Rico are transported in "interstate" commerce and not "imported" into the United States. But, this implication does not rise to the dignity of a "legal fiction" because it is contrary to a legal fact. The legal *fact* is that Puerto Rico is a possession of, and is not a part of, the United States.[19] It *may* eventually become

---

[19] See cases cited under Point V. Also note Section 3797 (a) (9) of Internal Revenue Code which reads as follows: "(9) 'United States' when

a part of the United States or *may* become a completely "foreign" country just as the Philippines were a possession of the United States and became a foreign country.[19a]

When the Philippines were still a territory—a possession of the United States, this Court pointed out, in *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, at p. 678:

> "Our tariff laws in their practical operation have in general placed merchandise brought from the Philippines into the United States in the same relationship to the constitutional taxing power of the national government and the states as articles brought here from foreign countries."

We reiterate: The absolute power of Congress to tax, limit or forbid imports from foreign countries or from unincorporated territories prevents any would-be importer from claiming that a limit on imports deprives him of any liberty or property without due process of law.

Two. The second long established principle of constitutional law which would dispose of any claim of a deprivation of liberty or property is that no person has any liberty or right of property to engage in any business to an extent or in a manner violating regulations imposed by government in the reasonable exercise of a constitutional power.

It has been heretofore demonstrated factually that a limitation upon imports of refined sugar was a necessary, integral part of the program for stabilization of the sugar industry which was adopted by the Congress, and was deliberately written into the three Sugar Acts of 1934, 1937

---

used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

See also statement of Hon. Fernos-Isern, Resident Commissioner from Puerto Rico—that Puerto Rico is an "unincorporated territory." Cong. Record, p. A4292, June 28, 1949.

[19a] Bills to grant Puerto Rico independence are continually under consideration by Congress.

and 1948. It is utterly irrelevant to discuss *other* programs of stabilization that *might* have been adopted, or that might be more profitable to Puerto Ricans and more injurious to mainland refiners and mainland workers. This Court has no authority to revise the economic policies and programs of the Congress; and the Sugar Act of 1948 must be sustained as a valid exercise of an admitted congressional power or else nullified *in toto*. (See, Point VIII, *infra*)

> "The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged power. Veazie Bank *v.* Fenno, 8 Wall. 533, 548, 19 L. Ed. 482." *United States v. F. W. Darby Lumber Co.*, 312 U. S. 100.

> "The Courts are without authority to declare such (economic) policy, or when it is declared by the legislative arm, to override it."
>
> *Nebbia* v. *People of State of New York*, 291 U. S. 502. (page 537)

Since the congressional power of regulating the sugar industry is conceded, the contention that any person is deprived of liberty or property by a reasonable limitation upon the amount of business in which he can engage (and thus exercise his "liberty" or utilize his "property") is hopelessly insupportable. It would be a pure waste of time to cite scores of decisions of this Court establishing the principle that: "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases." (*Nebbia* case, *supra*, p. 527)

> "and the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." (*Nebbia* case, *supra*, p. 525)

The fundamental reasonableness of quota restrictions upon the marketing and transportation of a product to stabilize an industry is exemplified in the regulation of the tobacco industry reviewed in the notable case of *Mulford v. Smith*, 307 U. S. 38, in which this Court held:

> "Any rule, such as that embodied in the Act, which is intended to foster, protect and conserve that commerce (interstate), or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits, the exercise of the power, the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce and *a fortiori* to *limitation of the amount of a given commodity which may be transported in such commerce*. The motive of Congress in exerting the power is irrelevant to the validity of the legislation." (Italics ours)

Thus we come, at long last, to the weakest argument which is commonly made to show a denial of due process; that is the arguiment that there is "arbitrary discrimination" in a quota restriction that applies particularly to one segment of the industry. This argument is bolstered up by broad assertions that "equal protection" is an element of "due process".

The *first* answer to this claim to "equal protection" is that while—

> "Undoubtedly the exercise of the commerce power is subject to the Fifth Amendment—; but that Amendment, unlike the Fourteenth, has no equal protection clause." *Currin v. Wallace*, 306 U. S. 1.

The *second* answer is that there is no requirement of uniformity in treatment of places or commodities in exercises of the commerce power.

> "To hold that Congress in establishing its regulation is restricted to the making of uniform rules would be

to impose a limitation which the Constitution does not prescribe. There is no requirement of uniformity in connection with the commerce power (Art. I, Sec. 8, Para. 3) such as there is with respect to the power to lay duties, imposts and excises (Art. 1, Sec. 8, Para. 1). *Currin v. Wallace*, supra.

> "*Congress may choose the commodities and places* to which its regulation shall apply. Congress may consider and weigh relative situations and needs." (Italics ours) (Ibid).

See also: *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584.

The *third* answer is that in legislating for Puerto Rico the plenary power of the Congress (heretofore established under Point V) is not subject to any limitation requiring uniformity of treatment. It should be obvious that the Congress must have the power to confer benefits or impose obligations upon Puerto Rico differing from those effective in the several states. This is precisely what was held in *Cincinnati Soap Co.* v. *United States, supra*, and other cases previously cited.

> "In exercising this power, Congress is not subject to the same constitutional limitations, as when it is legislating for the United States . . . The Constitutional restrictions on the power of Congress to deal with articles brought into the United States, do not apply to articles brought into or sent out of the Philippines." (The Philippines were then an unincorporated territory.) *Hooven & Allison Co. v. Evatt*, supra, P. 674

Thus the entire "due process" argument in this case narrows down to the contention that the limitation on imports of refined sugar is such an *unreasonable* and *arbitrary* discrimination against Puerto Ricans as to deny them liberty and property without due process of law. The reasons for this limitation are so obvious and the need for such a limitation are so clear (as heretofore shown), in order to make

effective a Congressional program for the "stabilization of the sugar producing, *refining* and *importing* industries",[20] that the claim of an *unreasonable, arbitrary* discrimination cannot possibly be supported. What the opposition to Sec. 207(b) is asking is that the Supreme Court review the *judgment* of the Congress in the exercise of an acknowledged power of the Congress, and override it. This is exactly what this Court has repeatedly, uniformly and properly declined to do. (See citations under Points V and VI).

Point VII

The challenge to the constitutionality of Sec. 207(b) is in effect a challenge to the constitutionality of the entire Act.

The absence of a separability clause in the Sugar Act of 1948 (and in preceding Acts) is clear evidence of the deliberate intention of the Congress to make the provisions of Section 207 an essential part of the legislation, in the absence of which the Act would not have been passed.

The records of Congressional hearings, heretofore cited, show that from the beginning there was some opposition in the executive department and from offshore interests to restrictions upon imports of refined sugar. In the 1934, 1937 and 1948 Acts the Congress, after full consideration of such opposition, carefully wrote into the law these restrictions.

On September 11, 1939, the President, by an emergency proclamation, suspended the operation of Title II of the Act of 1937 (Proclamation No. 2361) and then on December 26, 1939, by Proclamation No. 2378 removed this suspension "with respect to the calendar year 1940". The Act of 1937 was afterwards extended by a resolution of the Congress so as to have a termination date of December 31,

---

[20] House Report No. 796. 80th Congress, 1st Sess.

1947 (Pub. No. 860, 76th Congress). In 1941 sugar came under war controls, following which the Sugar Act of 1948 was passed and approved August 8, 1947.

In the Act of 1948 there was a most significant amendment added to the Act of 1937. Under the broad suspension power in Section 509 of the Act of 1937 the President had suspended in 1939 the operation of Title II of that Act. (Title II included quotas, and limitations on raw and refined sugar marketings and imports.) The Congress gave the President a similar power of suspension in Section 408 of the Act of 1948. But, the Congress specifically limited this power to suspend the import limitations in Section 207, by adding a new paragraph to Section 207 reading as follows:

> "(g) The direct consumption portions of the quotas established pursuant to this section, and the enforcement provisions of Title II applicable thereto, shall continue in effect and shall not be subject to the provisions of Section 408 of this Act unless the President acting thereunder specifically finds and proclaims that a national economic or other emergency exists with respect to sugar or liquid sugar which requires the suspension of direct consumption portions of the quotas."

By the foregoing revision of the Act of 1937 the Congress definitely expressed its opinion that the import limitations were so essential a part of the Act that—not only could they not be suspended separately but they could not even be suspended as a part of the suspension of Title II unless the President made a special finding that such suspension was required because of a national emergency.

Although the Act of 1937 authorized the President to suspend the operation of Title II or Title III (conditional payments), the Act of 1948 only authorized suspension of Title II. But, with the proviso requiring a special finding

as to the need for suspending Sec. 207 of Title II, the Congress showed its intent to have Section 207 remain in effect even after suspension of other quota limitations, unless the President found it necessary to suspend *all* the quota and import limitations.

It is hard to conceive of a plainer demonstration of the fact that without the inclusion of import limitations the Congress would not have enacted the Sugar Act of 1948. Hence the invalidation of Section 207 or any provision thereof would nullify the entire Act of 1948; or at least all the provisions of Title II, if that title could be regarded as a separable part of the Act because of the Presidential authority given to suspend that title alone in event of a national emergency.

It is recognized that a separability clause is an aid in determining the legislative intent but "not an inexorable command". (*Dorchy* v. *Kansas*, 264 U. S. 286, 290.) However, its absence leaves in force the "presumption . . . that the legislature intends an Act to be effective as an entirety". (*Williams* v. *Standard Oil Co. of La.* 278 U. S. 235.) What a court is concerned with is the legislative intent.

> "In seeking the legislative intent, the presumption is against any mutilation of a statute, and the courts will resort to elimination only where an unconstitutional provision is interjected into a statute otherwise valid, and is so independent and separable that its removal will leave the constitutional features and purposes of the Act substantially unaffected by the process". Williams v. Standard Oil Co. of La., supra.

Summary Reply to Briefs of Government of Puerto Rico and Central Roig

The present brief, in behalf of the continental sugar refiners, is intended not to duplicate, but to supplement the Government brief for the Secretary of Agriculture in

which there is a full and adequate defense of the Sugar Act of 1948 and of its basic constitutionality.

We have sought to add to this a consideration of the particular interests of the continental sugar refiners. This is not merely a private interest in large investments and enterprises that have contributed to the welfare of the United States for over two hundred years. There is also a vital public interest in the maintenance of this essential industry within the United States, so that our country will not be very largely dependent upon off-shore enterprises, some in foreign countries and some in territories or possessions which, regardless of the citizenship of their people, are as a *geographic fact* not an integral part of the United States. Our economy should be as self sufficient as possible, particularly in a period of the world's history when international warfare has made, and may again make, the continental United States not only an "arsenal of democracy" but also a fortress within which lies the last protection of the government and people of the United States.

It is also a matter of great public interest that there should be maintained this old and valuable industry of sugar refining, which produces a large amount of direct and indirect employment, not only in the refineries, but in the shipment and distribution of their products. This industry produces not only an essential of daily living, but also a very substantial income to support the people of the United States who in turn support their Government by taxes paid from such income.

In reply to a great deal of talk about "freedom of competition" presented in the opposing briefs, we should point out that, prior to the Sugar Act of 1934 when there was unlimited competition among the growers of cane sugar and beet sugar, the continental sugar refiners could pur-

chase all the raw cane sugar they desired from any area in the world; and that the inadequate prices received by the growers then permitted the sugar refiners to sell a greater volume of sugar at lower prices than they could sell after the volume of sugar available to the refiners was drastically reduced, and as a result better prices and a better income could be had by the growers.

In order to protect the growers of cane and beet sugar in the United States and in other countries from which raw sugar was obtained, the first sugar act and the subsequent acts were passed as regulations of commerce in the United States and commerce from abroad. This serious interference with a "free competition" among the growers, by establishing quotas which limited the marketing of sugar, might have had devastating results, with unjust effects particularly upon those *already* engaged in this industry, and having far-reaching enterprises of growing, refining and distributing sugar. It was immediately obvious also that lifting the price of raw sugar by quota regulation, together with the maintenance of wages and standards of living acceptable in continental United States, would seriously restrict the competition of American refiners with cheaper sugar produced elsewhere and under tropical living standards, in addition to the limitation already placed on their competition by protected markets in other countries.

Faced with these conditions the Congress took up the difficult problem of protecting the sugar growers from destructive "free competition" and avoiding at the same time the rapid destruction of the sugar refining industry in continental United States, as a result of starving it with inadequate supplies of raw sugar. It is almost amusing to read the *defense* in the brief of the Government of Puerto Rico *of the legality and justice* of a federal law for the very purpose of preventing destructive competition among the

investors and workers in sugar plantations; and then to read the *denunciation of the legality and justice* of provisions in the same law, not merely to prevent destructive competition among the investors and workers in the sugar-refining industry, but also to prevent the industry from being starved to death because of inability to get the raw sugar supplies upon which its life depends.

In this connection it should be realized that the entire purpose of the sugar acts has been to deal fairly with *all* those engaged in the industry, so that they might save, and make profitable, their investments; and at the same time, in the language of President Roosevelt "to provide against further expansion of this necessarily expensive industry". Undoubtedly President Roosevelt's attention was directed primarily to the interests of those engaged in cane-sugar and beet sugar production, but the same philosophy and program would apply also to those engaged in sugar refining.

It was desirable to protect against destructive competition not only growers in continental United States, but also growers outside our continental boundaries to whom we look for our supplies of raw sugar; and so the sugar acts have been a boon to the growers in Cuba, which is a foreign country. But it is a strange perversion of logic to argue, as counsel for the Government of Puerto Rico argue, that a provision against "further expansion of this necessarily expensive industry" should be limited by the Congress to the *growers;* and that, when supplies of raw sugar were restricted by law, there ought to be indefinite further expansion of *refineries* competing for limited supplies, resulting in the eventual and indeed rapid destruction of one of the outstanding industries in the United States, with heavy losses of investment, employment and taxable income to be suffered by the people residing within the continental boundaries of the United States.

Apparently the injustice of the argument leads to the emphasis most strongly placed in the brief in behalf of Central Roig upon the argument that the Congress has no *power* to deal justly with the interests of the continental refiners. The claim that the Congress has no *power* is rested upon the perpetual and shaky foundation of the due process clause which has been so often the last resort in an effort to persuade this court to substitute its judgment for that of the legislature in the determination of a complicated industrial issue.

Any such restrictive legislation as that now in question must always seem to some of the persons affected, to bear unequally upon them. This apparent inequality then becomes the basis for a denunciation of "arbitrary discrimination". In the present case, however, there can be no question that there was no arbitrary discrimination against the people of Puerto Rico in the Sugar Act of 1934 since they were permitted to continue marketing on the continent as much refined sugar as they had ever marketed. So, the argument is made that it has *become* an "arbitrary discrimination" against the people of Puerto Rico not to permit them after 1934 to increase their refining and marketing in destructive competition with continental refiners who in the same law were restricted in the amount of sugar which they could refine and market on the continent by continuing limitations upon the amount of raw sugar which would be available to them.

Faced with the weakness of any argument that there was any discrimination against *individuals* engaged in the industry, the final resort of the Government of Puerto Rico is to the argument that the Congress has no power to pass a law which has the effect of preventing people in Puerto Rico from producing a product and then marketing it in the United States, despite the fact that the established policy

of the United States is to create a restricted market in this product. A curious feature of this argument is that counsel for the Government of Puerto Rico freely concede the power of the Congress to prevent persons from producing in Puerto Rico and marketing in the United States more than a limited amount of *raw* sugar. But, it is argued that the *same* power is *non-existent* when it is exerted to prevent the *same* people from producing and marketing more than a limited amount of *refined* sugar. Of course, the entire argument about "liberty to engage in a trade" becomes absurd. If the liberty to engage in a trade of producing raw sugar can be limited, so can the liberty to engage in the trade of producing refined sugar. The whole argument simmers down to the indefensible demand that the Supreme Court substitute its judgment, as to what is fair and equitable treatment of those subject to the Sugar Acts, for the judgment of the Congress.

Conclusion

It is our position that Section 207(b) is a valid exercise of the acknowledged power of Congress to enact the Sugar Act of 1948, as a comprehensive program to stabilize the sugar industry; that this section is an integral part of the Act; and that the Act as a whole is constitutional. We submit that there is no reason or legal precedent to justify the mutilation of the statute, and the thwarting of the intent of Congress in enacting it, by judicial nullification of one of its most vital provisions.

Respectfully submitted,

DONALD R. RICHBERG,
Attorney for The American Sugar Refining Company, et al., Respondents-Intervenors.

APPENDIX A

Sugar Situation

Message of the President to Congress

[Released by the White House February 8]

To the Congress:

Steadily increasing sugar production in the continental United States and in insular regions has created a price and marketing situation prejudicial to virtually everyone interested. Farmers in many areas are threatened with low prices for their beets and cane, and Cuban purchases of our goods have dwindled steadily as her shipments of sugar to this country have declined.

There is a school of thought which believes that sugar ought to be on the free list. This belief is based on the high cost of sugar to the American consuming public.

The annual gross value of the sugar crop to American beet and cane growers is approximately $60,000,000. Those who believe in the free importation of sugar say that the 2-cents-a-pound tariff is levied mostly to protect this 60-million-dollar crop and that it costs our consuming public every year more than 200 million dollars to afford this protection.

I do not at this time recommend placing sugar on the free list. I feel that we ought first to try out a system of quotas with the threefold object of keeping down the price of sugar to consumers, of providing for the retention of beet and cane farming within our continental limits, and also to provide against further expansion of this necessarily expensive industry.

Consumers have not benefited from the disorganized state of sugar production here and in the insular regions. Both the import tariff and cost of distribution, which together account for the major portion of the consumers' price for sugar, have remained relatively constant during the past 3 years.

This situation clearly calls for remedial action. I believe that we can increase the returns to our own farmers, contribute to the economic rehabilitation of Cuba, provide adequate quotas for the Philippines, Hawaii, Puerto Rico, and

the Virgin Islands, and at the same time prevent higher prices to our own consumers.

The problem is difficult but can be solved if it is met squarely and if small temporary gains are sacrificed to ultimate general advantage.

The objective may be attained most readily through amendment of existing legislation. The Agricultural Adjustment Act should be amended to make sugar beets and sugar cane basic agricultural commodities. It then will be possible to collect a processing tax on sugar, the proceeds of which will be used to compensate farmers for holding their production to the quota level. A tax of less than one half cent per pound would provide sufficient funds.

Consumers need not and should not bear this tax. It is already within the executive power to reduce the sugar tariff by an amount equal to the tax. In order to make certain that American consumers shall not bear an increased price due to this tax, Congress should provide that the rate of the processing tax shall in no event exceed the amount by which the tariff on sugar is reduced below the present rate of import duty.

By further amendment to the Agricultural Adjustment Act, the Secretary of Agriculture should be given authority to license refiners, importers, and handlers to buy and sell sugar from the various producing areas only in the proportion which recent marketings of such areas bear to total United States consumption. The average marketings of the past 3 years provide on the whole an equitable base, but the base period should be flexible enough to allow slight adjustments as between certain producing areas.

The use of such a base would allow approximately the following preliminary and temporary quotas:

	Short Tons
Continental beets	1,450,000
Louisiana and Florida	260,000
Hawaii	935,000
Puerto Rico	821,000
Philippine Islands	1,037,000
Cuba	1,944,000
Virgin Islands	5,000
	6,452,000

The application of such quotas would immediately adjust market supplies to consumption, and would provide a basis for reduction of production to the needs of the United States market.

Furthermore, in the negotiations for a new treaty between the United States and Cuba to replace the existing commercial convention, which negotiations are to be resumed immediately, favorable consideration will be given to an increase in the existing preferential on Cuban sugars, to an extent compatible with the joint interests of the two countries.

In addition to action made possible by such legislative and treaty changes, the Secretary of Agriculture already has authority to enter into codes and marketing agreements with manufacturers which would permit savings in manufacturing and distributing costs. If any agreements or codes are entered into, they should be in such form as to assure that producers and consumers share in the resulting savings.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE, *February 8, 1934.*

APPENDIX B

ESTIMATED PRICE PREMIUMS AND CASH SUBSIDIES RECEIVED BY APPELLANT ROIG'S AFFILIATES, (a) 1938–1948 (b)

Estimated Price Premiums Received on Sugar Produced in U. S. Quota Protected Market and Cash Subsidies Received in Form of Benefit Payments Under Sugar Acts of 1937 and 1948

Year (1)	Benefit Payments Made to Roig Affiliates Under Sugar Acts of 1937 and 1948 (c) (2) (dollars)	Estimate of Roig Affiliates' Production Based on Benefit Payments Received (d) (3) (short tons, raw value)	Unit Quota Premium Received (e) (4) (cents per lb.)	Estimated Total Quota Premium Received (f) (5) (dollars)	Total Estimated Direct Benefits Received Under Sugar Act of 1937 (Sum of Estimated Quota Premiums and Cash Subsidies) (g) (6) (dollars)
1938	332,885	36,273	.896	650,012	982,897
1939	295,605	30,059	.315	189,372	484,977
1940	313,814	33,094	.556	368,005	681,819
1941	308,784	32,256	.628	405,135	713,919
1942	338,969	36,487	0	0	338,969
1943	315,892	32,640	0	0	315,892
1944	261,012	25,890	0	0	261,012
1945	320,596	33,424	0	0	320,596
1946	330,259	35,035	0	0	330,259
1947	342,040	36,998	0	0	342,040
1948	378,696	43,107	.415	357,788	736,484
Totals	3,538,552			1,970,312	5,508,864 (h)

(a) Centrals Roig and El Ejemplo.
(b) Data respecting benefit payments to individual growers not available for 1935 and 1936, and since no benefit payments were made in 1934 and 1937, the period 1934–1937 has been omitted from this table.
(c) Received directly from Sugar Branch, Production and Marketing Administration, U. S. Dept. of Agriculture.
(d) Estimates of production interpolated from reported total payments on basis of unit payment scale contained in Section 304 (c) of the Sugar Acts of 1937 and 1948.
(e) From Appendix C, column 6.
(f) Obtained by multiplying column 3 by unit premium (column 4 converted to the short ton equivalent).
(g) Sum of columns 2 and 5.
(h) Benefit payments received by Roig in 1935 and 1936, and quota premiums received by Roig in 1934–1937, inclusive, are not included. Accordingly, the figure of $5,508,864 does not represent the total amount of direct benefits received by Roig under the sugar control statutes.

(Here follows Exhibit C.)

APPENDIX C

Price Premiums and Cash Subsidies Received by Puerto Rican Raw Sugar Producers, 1934–1948

Sales in U. S. Tariff-Quota Protected Market and Cash Subsidies Received in Form of Benefit Payments Under Sugar Acts of 1934, 1937 and 1948

Year	Average Price of Raw Sugar in U. S. Market (Duty-Paid N. Y. Basis) (a)	Average Price of Raw Sugar in World Market (Converted to N. Y. Basis) (b)	Unit Price Premiums Received on Sales in U. S. Tariff-Quota Protected Market: Unit Price Premium Received (c)	Unit Tariff Premium Received (Average Cuban Duty) (d)	Unit Quota Premium Received (e)	Sales of Puerto Rican Sugar in U. S. Market (f)	Total Price Premium Received (g)	Total Tariff Premium Received (h)	Total Quota Premium Received (i)	Total Cash Subsidies Received (Benefit Payments Under Sugar Acts) (j)	Total Direct Benefits Received Under Sugar Acts (Sum of Quota Premiums and Cash Subsidies) (k)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	(cents per lb.)	(cents per lb.)	(cents per lb.)	(cents per lb.)	(cents p	(short tons, raw value)	(dollars)	(dollars)	(dollars)	(dollars)	(dollars)
1934	3.019	1.04	1.979	1.52	45	807,381	31,956,140	24,544,382	7,411,758		7,411,758
1935	3.231	1.00	2.231	.90	1.34	793,177	35,391,558	14,277,186	21,114,372	1,658,880	22,773,252
1936	3.594	1.02	2.574	.90	1.67	907,238	46,704,612	16,330,284	30,374,328	12,774,272	43,148,600
1937	3.443	1.32	2.123	.90	1.22	806,340	38,058,596	16,134,120	21,924,476		21,924,476
1938	2.936	1.14	1.796	.90	.80	815,294	29,285,360	14,675,292	14,610,068	9,502,122	24,112,190
1939	2.982	1.59	1.392	1.077	.31	1,125,844	31,343,497	24,250,680	7,092,817	8,871,084	15,963,901
1940	2.786	1.33	1.456	.90	.55	798,316	23,246,962	14,369,688	8,877,274	10,617,743	19,495,017
1941	3.378	1.85	1.528	.90	.62	992,933	30,344,032	17,872,794	12,471,238	9,566,735	22,037,973
1942	3.739	(b)	.751 (c)	.751	6	836,225	12,560,100	12,560,100	0	11,231,588	11,231,588
1943	3.740	(b)	.750 (c)	.75	0	880,153	13,202,295	13,202,295	0	13,122,990	13,122,990
1944	3.743	(b)	.750 (c)	.75	0	743,308	11,149,620	11,149,620	0	12,214,038	12,214,038
1945	3.750	(b)	.750 (c)	.75	0	902,660	13,539,900	13,539,900	0	13,061,033	13,061,033
1946	4.589	(b)	.750 (c)	.75	0	866,914	13,003,710	13,003,710	0	13,271,249	13,271,249
1947	6.217	(b)	.750 (c)	.75	0	968,545	14,528,175	14,528,175	0	15,060,552	15,060,552
1948	5.545	4.63	.915	.50	.41	1,013,175	18,541,103	10,131,750	8,409,353	15,492,292	23,901,645
Totals							362,855,660	230,569,976	132,285,684	140,444,578	278,730,262

(a) *Lamborn Sugar-Market Report*, May 3, 1949.

(b) *The World Sugar Situation*, August, 1944, U. S. Dept. of Agriculture for 1934–1941; 1948 figure computed from ... States Government's purchase of the bulk of Cuba's crops for distribution and resale to other countries, ...

(c) Difference between columns 2 and 3. The unit price premiums received for the years 1942–1947 represent ...

(d) Inasmuch as the total price premium is attributable to some extent to the duty on foreign sugar, in comput... all dutiable raw sugar imported into the United States comes from Cuba which, in the absence of tariff an... duty rate, has been deducted in making the adjustment. For the years 1934, 1939 and 1942 when change... years has been used.

(e) Difference between columns 4 and 5. The unit price premium received in 1942 through 1947 was the unit ...

(f) Official charges against U. S. quotas:
For 1934–1936, *Statistics on Receipts and Distribution of Sugar in the United States, 1931–39*, Statistical Bull...
For 1937–1941, *Final Charges Against Sugar Quotas, 1937–1944*, U. S. Dept. of Agriculture Release, Dece...
For 1942–1947, *Sugar Reports No. 2*, U. S. Dept. of Agriculture, July 28, 1948. Figure for 1943 includes 2... sugar actually shipped to the United States.
For 1948, *Sugar Reports No. 5*, U. S. Dept. of Agriculture, July 7, 1949.

(g) Obtained by multiplying sales (column 7) by unit premium (column 4 converted to the short ton equivalent).

(h) Obtained by multiplying sales (column 7) by unit premium (column 5 converted to the short ton equivalent).

(i) Obtained by multiplying sales (column 7) by unit premium (column 6 converted to the short ton equivalent).

(j) Obtained directly from Sugar Branch, Production and Marketing Administration, U. S. Dept. of Agriculture.

(k) Obtained by adding column 10 and column 11.

Price Premiums Received on Sales in U. S. Tariff-Quota Protected Market

Unit Price Premium Received (c)	Unit Tariff Premium Received (Average Cuban Duty) (d)	Unit Quota Premium Received (e)
(4)	(5)	(6)
(cents per lb.)	(cents per lb.)	(cents per lb.)
1.979	1.52	.459
2.231	.90	1.331
2.574	.90	1.674
2.123	.90	1.223
1.796	.90	.896
1.392	1.077	.315
1.456	.90	.556
1.528	.90	.628
.751 (c)	.751	0
.750 (c)	.75	0
.750 (c)	.75	0
.750 (c)	.75	0
.750 (c)	.75	0
.750 (c)	.75	0
.915	.50	.415

...riculture for 1934–1941; 1948 figure computed from data in *Lamborn Sugar-Market Report*, March 15, 1949. Because of the disruption of normal markets during the war, and the United... ...ts for distribution and resale to other countries, no world market price as such is recognized for the period from 1942 through 1947.

...iums received for the years 1942–1947 represent the unit tariff premiums only.

...e extent to the duty on foreign sugar, in computing that portion of the price premium attributable to the quota system, allowance has been made for the duty factor. Since virtually ...omes from Cuba which, in the absence of tariff and quota protection, is capable of supplying the United States' imports in full, the rate of duty on Cuban sugar, rather than the full ... For the years 1934, 1939 and 1942 when changes in the rate of duty were made, the average rate of duty based on a simple averaging of rates in effect each day of the respective ...

...ium received in 1942 through 1947 was the unit tariff premium only since quotas were in suspension.

...*Sugar in the United States, 1931–39*, Statistical Bulletin No. 77, U. S. Dept. of Agriculture, September, 1942.
...*7–1944*, U. S. Dept. of Agriculture Release, December 20, 1945.
...ulture, July 28, 1948. Figure for 1943 includes 238,277 tons shipped to United Kingdom (Indian exchange arrangement to conserve shipping) which received same price premiums as ...

..., July 7, 1949.
... (column 4 converted to the short ton equivalent).
... (column 5 converted to the short ton equivalent).
... (column 6 converted to the short ton equivalent).
...keting Administration, U. S. Dept. of Agriculture.